



LIBRARY OF CONGRESS

U.S. Copyright Office

[Docket No. 2012-12]

Orphan Works and Mass Digitization; Request for Additional Comments and Announcement of Public Roundtables

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Notice of Inquiry.

SUMMARY: The U.S. Copyright Office will host public roundtable discussions and seeks further comments on potential legislative solutions for orphan works and mass digitization under U.S. copyright law. The meetings and comments will provide an opportunity for interested parties to address new legal developments as well as issues raised by comments provided in response to the Office's previous Notice of Inquiry.

DATES: The public roundtables will be held on March 10, 2014 from 9:00 a.m. to 5:00 p.m. EST and March 11, 2014 from 9:00 a.m. to 5:00 p.m. EST. Written comments must be received no later than 5 p.m. EST on April 14, 2014.

ADDRESSES:

Public Roundtables

The public roundtables will take place in the Copyright Office Hearing Room, LM - 408 of the Madison Building of the Library of Congress, 101 Independence Avenue S.E., Washington, D.C. 20559. The Copyright Office strongly prefers that requests for participation be submitted electronically. The agendas and the process for submitting requests to participate in or observe one of these meetings are included on the Copyright

Office website. If electronic registration is not feasible, please contact the Office at 202-707-1027.

Public Comments

Members of the public will have the opportunity to submit written comments following the public roundtable meetings. The written comments may address topics listed in this Notice of Inquiry as well as respond to any issues raised during the public meetings. All written comments should be submitted electronically. A comment form will be posted on the Copyright Office website at <http://copyright.gov/orphan/> no later than March 12, 2014. The website interface requires commenting parties to complete a form specifying name and organization, as applicable, and to upload comments as an attachment via a browser button. To meet accessibility standards, commenting parties must upload comments in a single file not to exceed six megabytes (MB) in one of the following formats: the Adobe Portable Document File (PDF) format that contains searchable, accessible text (not an image); Microsoft Word; WordPerfect; Rich Text Format (RTF); or ASCII text file (not a scanned document). The form and face of the comments must include both the name of the submitter and organization. The Office will post the comments publicly on the Office's website exactly as they are received, along with names and organizations. If electronic submission of comments is not feasible, please contact the Office at 202-707-1027 for special instructions.

FOR FURTHER INFORMATION CONTACT: Karyn Temple Claggett, Associate Register of Copyrights and Director of Policy and International Affairs, by telephone at 202-707-1027 or by email at kacl@loc.gov, or Catherine Rowland, Senior Counsel for

Policy and International Affairs, by telephone at 202-707-1027 or by email at crowland@loc.gov.

SUPPLEMENTARY INFORMATION:

Background: The Copyright Office is reviewing the issue of orphan works¹ under U.S. copyright law in continuation of its previous work on the subject and to advise Congress on potential legislative solutions. As part of its current review, the Office is considering recent developments in the legal and business environments regarding orphan works in the context of: (1) occasional or isolated uses of orphan works; and (2) mass digitization. In October 2011, the Office published a Preliminary Analysis and Discussion document (the “Analysis”) that examined various legal issues involved in mass digitization projects.²

Subsequently, to assist with further review of the issue, the Office published a general Notice of Inquiry (the “Notice”) seeking comments from the public on both mass digitization and isolated uses of orphan works.³ The Notice provided background on the Office’s previous review of this issue in its January 2006 *Report on Orphan Works* (the “2006 Report”),⁴ legislation proposed in 2006 and 2008,⁵ the Google Books Search and

¹ “An ‘orphan work’ is an original work of authorship for which a good faith, prospective user cannot readily identify and/or locate the copyright owner(s) in a situation where permission from the copyright owner(s) is necessary as a matter of law.” Copyright Office Notice of Inquiry, Orphan Works and Mass Digitization, 77 FR 64555 (Oct. 22, 2012), *available at* <http://www.copyright.gov/fedreg/2012/77fr64555.pdf>.

² U.S. COPYRIGHT OFFICE, LEGAL ISSUES IN MASS DIGITIZATION: A PRELIMINARY ANALYSIS AND DISCUSSION DOCUMENT (2011), *available at* http://www.copyright.gov/docs/massdigitization/USCOMassDigitization_October2011.pdf.

³ Notice, 77 FR at 64555-61.

⁴ U.S. COPYRIGHT OFFICE, REPORT ON ORPHAN WORKS (2006), *available at* <http://www.copyright.gov/orphan/orphan-report-full.pdf>.

Hathitrust litigation,⁶ the role of the Office and private registries in alleviating the orphan works problem, legal issues in mass digitization, and recent international developments. In 2013, the Office received ninety-one initial comments from various interested parties and eighty-nine reply comments. The Notice, comments, and background materials are available at the Copyright Office website. The Office now announces public roundtables and seeks further public comments to discuss new legal developments as well as specific issues raised by earlier public comments as it considers potential legislative recommendations.

Subjects of Comments and Public Roundtables: After reviewing the comments in response to the Copyright Office’s prior Notice, the Office is interested in holding public roundtables to further explore the issues surrounding orphan works and mass digitization. The Office will hold the public roundtable discussions over the course of two days. The first day will cover the following topics: (1) the need for legislation in light of recent legal and technological developments; (2) defining a good faith “reasonably diligent search” standard; (3) the role of private and public registries; (4) the types of works subject to any orphan works legislation, including issues related specifically to photographs; and (5) the types of users and uses subject to any orphan works legislation. The second day will include discussions of the following topics: (1) remedies and procedures regarding orphan works; (2) mass digitization, generally; (3) extended collective licensing and mass digitization; and (4) the structure and mechanics of a

⁵ Shawn Bentley Orphan Works Act of 2008, S. 2913, 110th Cong. (2008); Orphan Works Act of 2008, H.R. 5889, 110th Cong. (2008); Orphan Works Act of 2006, H.R. 5439, 109th Cong. (2006).

⁶ *Authors Guild, Inc. v. HathiTrust*, 902 F. Supp. 2d 445 (S.D.N.Y. 2012); *Authors Guild, Inc. v. Google Inc.*, 770 F. Supp. 2d 666 (S.D.N.Y. 2011) (“*Google I*”).

possible extended collective licensing system in the United States. Each of these topics is explained in more detail below.

Additionally, the Office invites further written comments regarding the subjects briefly identified above and further explained below, including from parties who did not previously address those subjects, or those who wish to amplify or clarify their earlier comments or respond to issues raised in the public roundtable meetings. A party choosing to respond to this Notice of Inquiry need not address every subject below, but the Office requests that responding parties clearly identify and separately address each subject for which a response is submitted. Commenters may address any or all of the issues identified below, as well as provide information on other aspects of these issues that are relevant to developing potential legislative solutions to the issues of orphan works and mass digitization.

Day One

Session 1: The need for legislation in light of recent legal and technological developments.

The Office's 2006 Report concluded that the orphan works problem was pervasive and provided draft legislative language for congressional consideration. Though several bills were introduced in 2006 and 2008,⁷ none of them ultimately were enacted. Since then, high-profile litigation in the United States brought the issue of orphan works back to the fore. In rejecting the proposed settlement agreement in *The Authors Guild, Inc. v. Google Inc.* in 2011, the Southern District Court of New York explicitly noted that it is Congress, and not the courts, who should decide how to resolve

⁷ See *supra* note 5.

the issue of orphan works.⁸ Recently, the same district court granted summary judgment to Google on copyright infringement claims relating to the Google Books Library Project, concluding that “Google Books provides significant public benefits,” and that its book scanning project constitutes fair use under U.S. copyright law.⁹ While the court’s ruling did find the Google Books mass digitization project to be fair use, it neither indicated how broadly the opinion could be used to justify other types of mass digitization projects nor did it explicitly address the issue of orphan works.

Similarly, on October 10, 2012, the Southern District of New York also ruled that the digitization project undertaken by the HathiTrust Digital Library (“HathiTrust”) and its five university partners was largely transformative and protected by fair use.¹⁰ The court, however, did not consider the copyright claims relating to the HathiTrust Orphan Works Project, finding that the issue was not ripe for adjudication because the defendants had suspended the project shortly after the complaint was filed.¹¹

In addition to these legal developments, technology has significantly progressed since Congress last considered the orphan works issue. Since 2008, technological developments have arguably mitigated the orphan works problem via vastly improved search tools and database technology. Improved search engine technology allows users

⁸ *Google I*, 770 F. Supp. 2d at 678. “Google Books” is the larger project that includes the Google Books Library Project and the Google Books Partner Project (formerly “Google Print”). Google commenced its book scanning project (then referred to as “Google Print Library Project”) in 2004. In September 2005, the Authors Guild of America and five publisher members of the Association of American Publishers (“AAP”) sued Google for copyright infringement. The Google Books Partner Project was created when Google and the publishers announced a settlement agreement in October 2012. References to “Google Books” or the “Google Books case” relate to litigation surrounding the Library Project.

⁹ *Authors Guild, Inc. v. Google Inc.*, Case No. 05 Civ. 8136 (DC), 2013 WL 6017130, *26 (S.D.N.Y. Nov. 14, 2013) (“*Google II*”).

¹⁰ *HathiTrust*, 902 F. Supp. 2d 445.

¹¹ *Id.* at 455-56.

to locate rights holders (and vice versa) via image, sound, or video searches. Improved databases, such as the PLUS Registry,¹² and database interoperability allow copyright rights holders to better publicize ownership information. Yet, many argue that these technologies are not being effectively utilized in the context of orphan works and a legislative solution remains necessary.

In light of recent legal and technological developments, the Office is interested in discussing the current need for legislation to address the issues of orphan works and mass digitization. Specifically, the public roundtable meetings will allow participants to discuss whether recent legal developments have obviated the need for legislation, or whether new legislation would resolve or alleviate the concerns identified in the comments. Can the orphan works problem be resolved under existing exceptions and limitations contained in the current Copyright Act, such as fair use? Should this determination hinge on the type of use or user making use of the work? If legislation is deemed necessary, how should it reflect or acknowledge recent developments in fair use law, if at all?

Additionally, the Office would like to discuss the impact of technological advancements. For example, have improved search tools and database technologies mitigated the orphan works problem, or are these technologies not being effectively utilized in the context of orphan works?

¹² The PLUS Registry (the “Registry”) is an online database created and operated by PLUS Coalition, Inc., an international group of communities “dedicated to creating, using, distributing and preserving images.” Users may search the Registry to find rights and descriptive information (“metadata”) for any image, and to find current contact information for related creators, rights holders and institutions. Owners may register their images and image licenses to allow authorized users to find rights and descriptive metadata using a specific ID or image recognition. PLUS COALITION, INC., “About,” <https://www.plusregistry.org/cgi-bin/WebObjects/PlusDB.woa/1/wo/kl6vPj6TeDu1MqoK7ajbug/0.107.27>. The role of private and public registries is further discussed in Session 3, below.

Session 2: Defining the good faith “reasonably diligent search” standard.

In its 2006 Report, the Copyright Office recommended that Congress amend the Copyright Act to limit the remedies available against good faith users of orphan works after the user performed a generally “reasonably diligent search” to locate the owner of that work. The 2008 bills set forth certain baseline requirements such as searching the Office’s online records, and would have required users to consult best practices applicable to the work at issue. Both copyright owners and users would have participated in developing these best practices, which the Register of Copyrights would have coordinated.

The Office is interested in discussing how best to define a good faith, reasonably diligent search in light of changes in the legal and technological environment since 2008, and whether improvements can be made to the standard set forth in the 2008 bills. What are the relative advantages or risks of flexible versus rigidly-defined search standards? Additionally, should the Office participate in developing search criteria or evaluating searches, and should regulations set forth specific search criteria? Moreover, what should be the role of community-developed best practices documents that may guide particular groups of users making particular types of uses, and who should develop these “best practices” documents? Finally, what role should the Office play in developing, monitoring, or certifying search criteria?

Session 3: The role of private and public registries.

One question regarding orphan works is the role public and private registries might play in any orphan works solution. The most obvious of these registries, the Copyright Office’s own registration and recordation system, provides a wealth of

copyright information but has limitations based on both technological requirements and the fact that registration and recordation is not mandatory in the United States. There are other registries that have ownership information, and there has been some suggestion that the Office should investigate enhancing interoperability between the Office system and private rights registries.¹³

The Office would like to discuss the role registration and recordation may play in helping to more effectively mitigate the orphan works problem. For example, in the context of orphan works, how could the Office facilitate and incentivize owners to register their works and keep their ownership and contact information current? Should failure to register with the Office affect the orphan status of a work? How could any such incentives be reconciled with the United States' obligations under the Berne Convention and other international instruments? Additionally, the Office is interested in learning more about the appropriate role of third party registries (commercial and noncommercial). For example, what could be the Office's role in overseeing or certifying these third party registries? Would it be helpful for the Office to establish a registry requiring users to register their use of, or intent to use, orphan works similar to that envisioned in the Orphan Works Act of 2008?¹⁴ Does the recently-passed UK orphan works legislation, which envisions a key role for a web portal connecting multiple private and public websites and databases, present an attractive model for utilizing and organizing these registries in the United States?

¹³ As mentioned in the Notice, the Office has begun digitizing its historic records and is initiating upgrades to its registration and recordation systems. These projects will facilitate public access to, and thus improve users' ability to investigate, the copyright status of works, including the identification and location of copyright owners. The upgrades to the registration and recordation systems also are meant to facilitate the effective registration of works and recordation of documents related to registered works, helping to ensure that the record and contact information on file with the Office remains accurate. Notice, 77 FR at 64558.

¹⁴ H.R. 5889, 110th Cong. sec. 2(a), § 514(b)(3) (2008).

Session 4: Types of works subject to orphan works legislation, including issues related specifically to photographs.

As described in the Office's previous Notice and many of the responding comments, orphan works remain a pervasive issue in copyright law. While the issue cuts across all creative sectors, the unique challenges posed by photographs have long been an obstacle to developing an effective orphan works solution. Photographs and other works of visual art may lack or may more easily become divorced from ownership information, especially in the age of social media that has largely transpired since Congress considered the 2008 bills. This lack of identifying information often prevents users from locating or even initiating a search for orphaned photographs' rights holders. The 2008 bills included a number of provisions specifically aimed at resolving some of the issues specific to photographs.

In light of the peculiar position of photographs, it is important to consider how any orphan works solution might address these specific works, either by creating specific rules or excluding them altogether. Excluding photographs would not be a novel solution; the European Union recently approved an orphan works directive (the "Directive") that provides an exception for noncommercial public interest users making noncommercial public interest uses of orphan works, while providing a general exclusion of photographs from the scheme.¹⁵

The Office is interested in discussing how to address the problems presented by certain types of works, including specifically photographic and visual arts orphan works.

¹⁵ Directive 2012/28/EU, of the European Parliament and of the Council of 25 October 2012 on Certain Permitted Uses of Orphan Works, *available at* <http://register.consilium.europa.eu/doc/srv?l=EN&t=PDF&gc=true&sc=false&f=PE%2036%202012%20REV%202>. Note, however, that photographs embedded in other, covered, works (*e.g.*, photographs contained in books) are included within this scheme. *Id.* at art. 1(4).

Should an orphan works solution exclude any particular type of work or should it include all copyrighted works? Would the exclusion of certain types of works substantially undermine the effectiveness of any orphan works solution? If all types of works are included, what (if any) special provisions are required to ensure that all copyright owners, such as photographers, are treated equitably within the legislative framework? Do recent developments such as the creation of voluntary registries, like the PLUS Registry,¹⁶ mitigate any of the earlier concerns regarding the treatment of photographs?

Session 5: Types of users and uses subject to orphan works legislation.

The Copyright Office's previous orphan works review did not differentiate between commercial and noncommercial uses and users of orphan works. Since then, however, there has been a debate regarding whether an orphan works solution should take into account the user's status as either a commercial or noncommercial entity. For example, the Directive provides an exception for noncommercial public interest users making noncommercial public interest uses of orphan works.¹⁷ Any solution that excludes commercial users and uses, however, may arguably provide an incomplete solution. Some have argued that the policy motivations behind any orphan works legislation logically should extend to commercial uses that may promote the underlying goals of the Copyright Act. The United Kingdom's recently adopted orphan works legislation does not differentiate between commercial and noncommercial users or uses.

The Office thus is interested in learning more about whether an orphan works solution should encompass both commercial and noncommercial uses. Should orphan

¹⁶ See PLUS COALITION, INC., *supra* note 12. Both the 2008 House and Senate bills would have delayed implementation until after such a registry was developed.

¹⁷ See Directive, *supra* note 15, at art. 6(2).

works legislation apply equally to commercial and noncommercial uses and users? If not, how should specific types of uses and users be treated within the legislative framework? Should orphan works legislation be limited only to uses by noncommercial entities with a public service mission? Should these entities be permitted to use orphan works only for limited purposes such as preservation, or should they be able to broadly use orphan works to provide access to the public? Should commercial entities be able to make commercial use of orphan works? What are the relative advantages or disadvantages of allowing such use?

Day Two

Session 1: Remedies and procedures regarding orphan works.

The Office's 2006 Report did not suggest creation of an exception to copyright for use of orphan works, but instead recommended that Congress limit the remedies that the copyright owner could seek against good faith users of orphan works to injunctive relief and "reasonable compensation" for the use of the work. The Office also recommended a "take-down" option for certain noncommercial users engaged in noncommercial activities, which was incorporated in the proposed 2008 legislation. In addition to the take-down provision, the legislation also would have (1) limited remedies to good faith users of orphan works having performed a reasonably diligent search, (2) been applicable on a case-by-case basis, and (3) permitted rights holders to reasonable compensation, but not statutory damages or attorneys' fees. The Senate bill would have allowed owners to reclaim their works by serving a "Notice of Claim of Infringement,"

requiring the user to cease the infringement and negotiate in good faith with the rights holder.¹⁸

The appropriate structure and scope of remedies continues to be a significant issue of concern for both copyright owners and potential users of orphan works. For example, the threat and unpredictable nature of statutory damages, the need for predictability and reasonableness in assessing damages, and the rights available to creators of derivative works based on orphan works are all issues that warrant further discussion.

The Office is interested in discussing remedies and procedures in the context of orphan works. What remedies should be available where orphan works rights holders emerge after a third party has already begun to use an orphaned work? What rights should be available for creators of derivative works based on orphan works? What procedures should be put in place where these situations arise? Does the limitation on liability model still make sense in the current legal environment? Should orphan works legislation instead be re-framed as an exception to copyright as it is in an increasing number of foreign jurisdictions?

Session 2: Mass digitization, generally.

The Office's 2006 Report and the 2008 proposed legislation did not consider the issue of mass digitization in detail. Although mass digitization was ongoing in 2008, the practice has since become much more prevalent. Thus, it is important to understand how mass digitization fits into an orphan works solution. Because many of the comments submitted in response to the Notice indicated that the issue of mass digitization should be treated separately from the issue of orphan works, it also is important to understand whether mass digitization fits into an orphan works solution.

¹⁸ S. 2913, 110th Cong. sec. 2(a) § 514(c)(1)(B), 514(b)(1)(A) (2008).

The Copyright Office would like to discuss the intersection of mass digitization and orphan works at the public roundtable meetings. As a preliminary matter, the Office is interested in discussing what types of digitization projects should be covered by any legislative proposal, including the scope of activities that can be accurately described as “mass digitization.” Additionally, it is important to review the relative risks and benefits of mass digitization projects. The Office would like to discuss the types of entities that might be able to engage in such activities under any legislative proposal, and the types or categories of works that should be covered. Moreover, under what circumstances should mass digitization projects proceed and how may digitized materials be used? How might any mass digitization solution differ from that of a general orphan works solution? Would potential solutions developed in the context of mass digitization ameliorate the issue of orphan works? How might these potential solutions interact?

Session 3: Extended collective licensing and mass digitization.

Several foreign countries have laws that address mass digitization in different ways. For example, recently-passed legislation in the United Kingdom creates a bifurcated approach allowing certain types of individual uses of orphan works and mass digitization.¹⁹ There, individual or occasional users of orphan works may apply for a non-exclusive license from a centralized government or government-sanctioned private agency on payment of a license fee held in escrow should rights holders re-emerge.²⁰ Users also must perform a diligent search for the rights holder, which must be verified by

¹⁹ See Enterprise and Regulatory Reform Act, 2013, c. 24, § 77, available at <http://www.legislation.gov.uk/ukpga/2013/24/section/77>.

²⁰ *Id.*

the authorizing body before a license will be issued.²¹ Cultural institutions engaging in mass digitization, on the other hand, may digitize works (including orphan works) in their existing collections through an extended collective licensing regime.²² The licenses granted are not exclusive and all rights holders have the right to opt out of any license.²³ Hungary has adopted a similar two-tier orphan works solution.²⁴ Several Nordic countries also have adopted extended collective licensing regimes for limited types of works and uses in the context of mass digitization.²⁵

The Office is interesting in reviewing the option of extended collective licensing for purposes of mass digitization in detail. For example, the Office is interested in discussing whether the United States should look abroad to foreign extended collective licensing approaches for ideas on domestic action on the issue of mass digitization. If so, which approach or components of any particular approach present attractive options for a potential U.S. course of action? Should such a system include both commercial and noncommercial uses, or be limited to noncommercial entities? How do extended

²¹ *Id.*

²² *Id.* In extended collective licensing models, representatives of copyright owners and representatives of users negotiate terms that are binding on all members of the group by operation of law (*e.g.*, all textbook publishers), unless a particular copyright owner opts out. Extended collective licensing regimes authorize the grant of broad licenses to make specified uses of in-copyright works for which it would be unduly expensive to clear rights on a work-by-work basis (*e.g.*, mass digitization of in-copyright works, photocopying in-copyright articles in library settings). The government or a trusted designee typically administers payments. It is not quite compulsory licensing in that the parties (rather than the government) negotiate the rates, but it nevertheless requires a legislative framework and often involves some degree of government oversight. *See* Notice, 77 FR at 64559.

²³ Enterprise and Regulatory Reform Act 2013 at Section 77.

²⁴ 100/2009 (V. 8) Korm. rendelet az árva mű egyes felhasználásainak engedélyezésére vonatkozó részletes szabályokról (Government Regulation on the Detailed Rules Related to the Licensing of Certain Use of Orphan Works), arts. 2(1), 2(2), 3 (Hung.), *available at* http://www.hipo.gov.hu/English/jogforras/100_2009.pdf.

²⁵ *See, e.g.*, Consolidated Act on Copyright 2010, No. 202, Art. 50–51 (2010) (Denmark); *see also* Copyright Act, No. 404, §§ 13–14 (2010) (Finland).

collective licensing systems work in practice in the countries where they have been adopted? Are there statistics or any longitudinal data regarding the success of extended collective licensing regimes, particularly vis-à-vis orphan works and mass digitization, around the world? Further, would the U.S. political, legal, and market structures, which can be quite different from foreign counterparts, support an extended collective licensing-type solution?

Session 4: The structure and mechanics of a possible extended collective licensing system in the United States.

Extended collective licensing systems exist where representatives of copyright owners and users negotiate terms that are binding on both members and similarly situated non-members of the group by operation of law, unless an interested copyright rights holder elects to opt out. Collective management organizations function by establishing, collecting, and distributing these license fees. These organizations typically are sanctioned or overseen by the government. Where these organizations collect licensing fees relating to orphan works, they typically hold these fees until the owner emerges to collect the fee or for a statutorily set period of time. In this way, extended collective licensing may present an option for resolving many of the issues inherent in mass digitization projects, especially as they relate to the incidental digitization of orphan works contained in these digitized collections.

While some other countries have embraced extended collective licensing, the United States currently does not have the legal framework for such a system. Nevertheless, there has been some discussion that extended collective licensing might be helpful in a mass digitization scenario. It is unclear, however, how extended collective

licensing could integrate with the current U.S. legal infrastructure to streamline the licensing process, or whether it could possibly upset existing and well-functioning markets for certain copyright-protected works. Moreover, the mechanical operation of such a system is unclear; for example, questions remain regarding procedures whereby copyright rights holders may “opt out” of any extended collective licensing regime.

The Office is interested in discussing specific details of an appropriate extended collective licensing system in the United States for mass digitization purposes. How might an extended collective licensing regime be structured in the United States? Could an extended collective licensing system be compatible with U.S. copyright laws, legal norms, and industry practices? How much direct oversight should the Office or any other governmental entity have over the establishment, authorization, and/or operation of collective management organizations? Are any existing collective management organizations in the United States capable of administering an extended collective licensing regime for mass digitization? If new collective management organizations are created, should they be structured as government entities, nonprofit entities licensed and/or funded by the government, or commercial entities licensed and/or funded privately or by the government?

Additionally, the Office recognizes that the opt-out and orphan works issues inherent in mass digitization projects are ripe for further discussion. For example, should rights holders be permitted to opt out of any extended collective licensing system at any time? How would rights holders’ ability to opt out affect licensees who may have made significant investments in the use of licensed works? How should orphan works “incidentally” included in a mass digitization project be handled? Should the collective

management organization be responsible for attempting to locate all rights holders and, if so, should a “reasonably diligent search” standard be applied to the organization? How should license fees be calculated and how should remuneration of authors and authors’ groups be handled? What types of entities should be able to utilize an extended collective licensing system for mass digitization?

Dated: February 5, 2014

Karyn A. Temple Claggett,
Associate Register of Copyrights
and Director of Policy and
International Affairs.

[BILLING CODE 1410-30-P]

[FR Doc. 2014-02830 Filed 02/07/2014 at 8:45 am; Publication Date: 02/10/2014]